

Supreme Court, U.S.

FILED

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JOSEPH E. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1988

In The Matter of **GREENE COUNTY
HOSPITAL, Debtor.**

**PATH-SCIENCE LABORATORIES, INC.,
and its successor and assigns,
Sergio G. Gonzalez, M.D., P.A.,**

Petitioner

V.

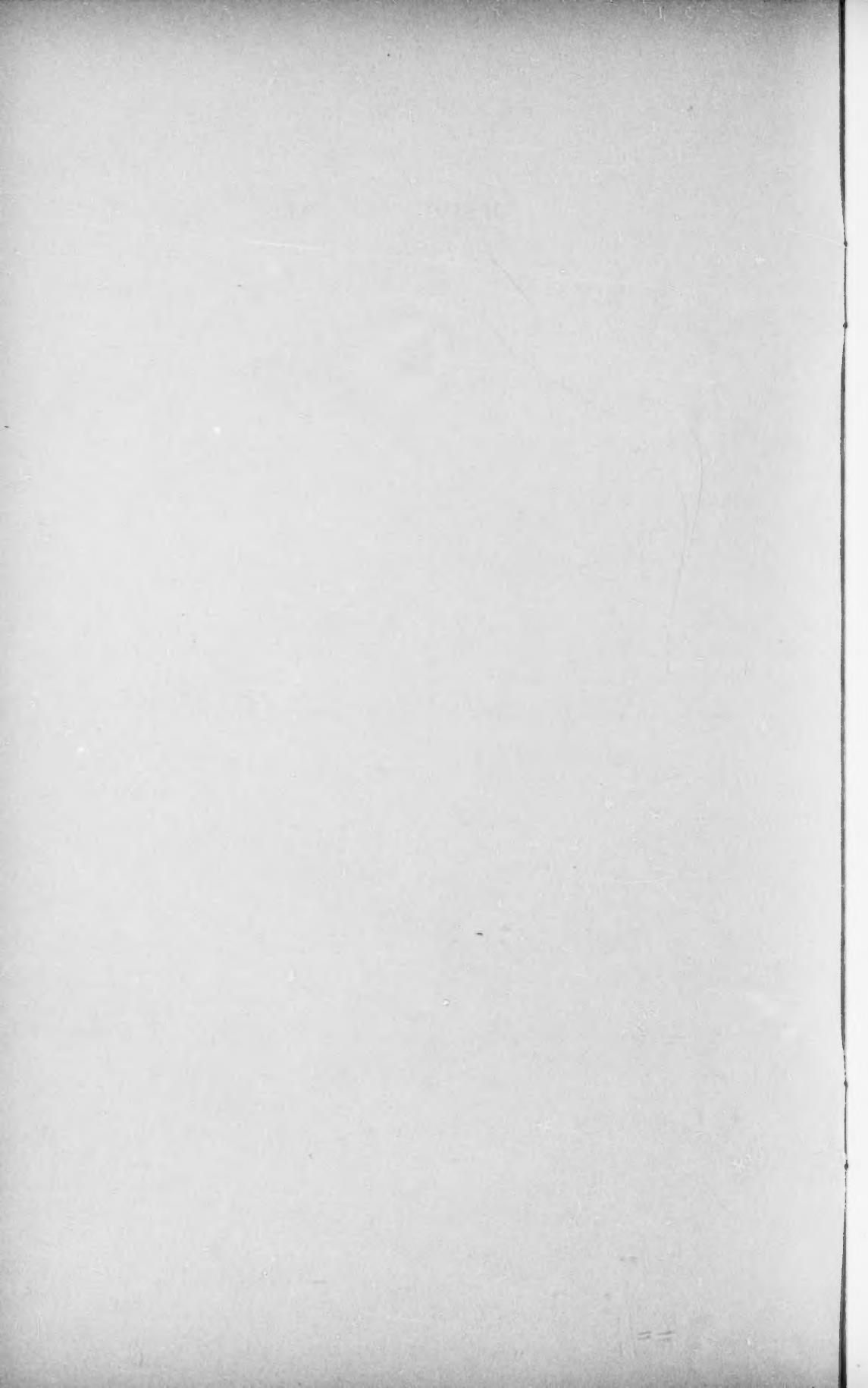
GREENE COUNTY HOSPITAL,

Respondent

**OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**NICHOLAS VAN WISER
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Counsel for Respondent



QUESTION PRESENTED

Whether the decision below by the United States Court of Appeals for the Fifth Circuit conflicts with a decision by the United States Court of Appeals for the Third Circuit in *In re Marin Motor Oil, Inc.*, 689 F.2d 445 (3rd Cir. 1982) and, if so, whether such conflict should constitute a ground for granting Petitioner's writ of certiorari.

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No. 87-1925

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October Term, 1988

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and its successor and assigns,
Sergio G. Gonzalez, M.D., P.A.,**

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v.

GREENE COUNTY HOSPITAL,

Respondent

**OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI
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FOR THE FIFTH CIRCUIT**

By its petition, the petitioner, Path-Science Laboratories, Inc., and its successor and assigns, Sergio G. Gonzalez, M.D., P.A., ask this Court to grant a writ of certiorari to review the Judgment and opinion of the United States Court of Appeals for the Fifth Circuit in *In re Greene County Hospital*, 835 F.2d 389 (5th Cir. 1988).¹

1. Respondent, Greene County Hospital, has no parent company, subsidiaries or affiliates.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on January 14, 1988. A timely petition for rehearing en banc was denied on February 19, 1988, and this petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Whether the decision below by the United States Court of Appeals for the Fifth Circuit conflicts with a decision by the United States Court of Appeals for the Third Circuit in *In re Marin Motor Oil, Inc.*, 689 F.2d 445 (3rd Cir. 1982) and, if so whether such conflict should constitute a ground for granting Petitioner's writ of certiorari.

STATEMENT OF THE CASE

The Respondent, Greene County Hospital, agrees with the statement of the case contained in the petitioner's petition.

IV

REASONS FOR DENYING CERTIORARI

1.

NO CONFLICT BETWEEN DECISIONS

The decision below in this case does not conflict with the decision of the United States Court of Appeals for the Third Circuit in *In re Marin Motor Oil, Inc., supra*. In contending that there is a conflict between the decision below and the Third Circuit's decision in *In re Marin Motor Oil, Inc., supra*, the petitioner points to the difference in method used by the Third Circuit and the Fifth Circuit in deciding when a district court's order affirming or reversing a bankruptcy court's order is final and therefore appealable.

As pointed out in the Fifth Circuit's decision in this case, there is a difference in the methods used by the two circuits to determine appealability of district court orders which rule upon bankruptcy court orders. The existence of such a difference does not mean that this Court should grant certiorari to review the decision in this case. Rule 17 of this Court's rules provides that this Court will consider granting certiorari when a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter.

The decision of the Fifth Circuit in this case is not in conflict with the decision of another federal court of appeals on the *same matter*. The Third Circuit's decision in *In re Marin Motor Oil, Inc., supra*, dealt with the appealability of a district court's order reversing a bankruptcy court's refusal to permit a creditors' committee to intervene in an adversary proceeding instituted by the Trustee. The Fifth Circuit's

decision in this case dealt with the appealability of a district court's order affirming a bankruptcy court's denial of a creditor's motion to dismiss a bankruptcy petition for a lack of subject matter jurisdiction. Had the Third Circuit's decision dealt with the same fact situation and had an opposite decision been reached regarding appealability, then the decision of the Fifth Circuit in this case would be in conflict with the decision of the Third Circuit on the *same matter*. That is not the case here. As a result, there is no conflict between the decisions of two federal courts of appeals which would require this Court to even consider granting certiorari to review the Fifth Circuit's decision in this case.

2.

ANY CONFLICT WHICH EXISTS DOES NOT CONCERN
AN IMPORTANT FEDERAL QUESTION

If any conflict is present between the Fifth Circuit's decision in this case and the Third Circuit's decision in *In re Marin Motor Oil, Inc., supra*, it is represented by the conflict between the method used by the Fifth Circuit and the Third Circuit to determine appealability of district court orders which affirm or reverse bankruptcy court orders. Conflict among the circuits as to the method used for making such a determination does not impair the uniformity of decision where uniformity is significant. A conflict among the circuits as to an important federal question is not presented. As a result, if a conflict is indeed present, certiorari should not be granted in this case.

CONCLUSION

For the above and foregoing reasons, this Court should refuse to grant a writ of certiorari to review the Judgment and opinion of the Fifth Circuit in this case.

Respectfully submitted,

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Counsel for Respondent

CERTIFICATE OF SERVICE

I, NICHOLAS VAN WISER, do hereby certify that I have this day mailed, postage prepaid, three copies of the Response to Petition for Writ of Certiorari to C. Everette Boutwell, Esquire, P.O. Box 4448, Laurel, MS 39441.

This the 31st day of August, 1988.


NICHOLAS VAN WISER

